



**Senate Bill 802
2007-2008
AN ACT TO PROTECT AND ENHANCE THE RIGHTS OF CHILD AND ADULT
VICTIMS AND WITNESSES OF CRIME**

Lead Sponsors:
Senate Majority Leader, Frederick E. Berry
Representative Peter J. Koutoujian

Background

Massachusetts has a long history as a leader in the Victim Rights Movement. In 1984, the Massachusetts Victim Bill of Rights (M.G.L. Ch. 258B) was enacted into law, creating the most comprehensive rights for victims of crime in any state in the United States at that time. This bill was filed and signed into law with extraordinary bipartisan legislative support and has existed for more than twenty years without diminishing or jeopardizing defendants' constitutional rights in any way.

It has been more than a decade since the last comprehensive review of the law, which led to a 1995 amendment. In those ten years, *the face of crime and the needs of crime victims have changed*. When compared with other states' initiatives to protect and serve victims, **Massachusetts has fallen behind** – but is now presented with an opportunity to return to the forefront of victim rights.

How Were the Legislative Goals Identified?

The Massachusetts Office for Victim Assistance (MOVA) launched the Victim Rights Law Project in 2003. Throughout the year, MOVA led statewide focus groups with criminal justice agencies, law enforcement personnel, victim service providers and victim survivors to identify the strengths of victim rights thus far and where improvement was needed. MOVA also studied other states' victim rights laws to help inform the need for changes in our own. From the feedback from diverse stakeholders across the state, MOVA identified common themes that directed the priority issues included in this legislation. It is our hope that this legislation will build upon past successes and continue the legacy of twenty years of victim rights in Massachusetts.

Content

The three overarching goals of this bill are to: (1) clarify and revise current language in M.G.L. Ch. 258B; (2) codify practices by criminal justice agencies that have evolved over the last 10+ years; and (3) add new rights to the Victim Bill of Rights that reflect the needs of crime victims today and which exist as precedents in other states' laws.

The following section-by-section analysis explains the provisions of this legislation and the rationale behind them. Please direct any questions to Rebecca O'Connor, MOVA Policy Analyst & Legislative Liaison, 617.727.7885 or Rebecca.O'Connor@state.ma.us.

SECTION-BY-SECTION SUMMARY AND BACKGROUND

SECTIONS 1 and 2.

Amends the definition of 'disposition' to include delinquent adjudication and youthful offender convictions.

Background:

This section was drafted in collaboration with the Department of Youth Services.

SECTION 3.

Amends the definition of 'family member' so that grandparents of a victim or witness are authorized to request CORI certification

Background:

Currently, grandparents, unlike other key family members, cannot easily access CORI certification without having to go through an extended process of paperwork because they are not explicitly identified as "family members" within the definition in MGL Ch. 258B. Grandparents often play a critical, and even caretaking, role in the lives of many young victims. Enabling them to receive information that enables them to be an effective support and advocate for a grandchild in their care or otherwise, is an easy fix in the statute.

SECTION 4. (See also Section 16(x))

Inserts a definition of the term "orientation" to Chapter 258B.

Background:

Section 16 of this legislation establishes the right for a victim or witness who is a child and/or has a disability to be provided with an orientation to the courtroom setting, court personnel, and rules of the court. This section inserts a new definition of the term "orientation" that helps clarify practices that will satisfy this requirement.

The orientation would help these victims and witnesses to feel some sense of security and preparedness by gaining a better understanding of what to expect from the court process and setting. This is extremely significant, since their trauma-related anxiety is heightened by the added stress of decreased physical or mental access to the court process.

SECTION 5.

Amends the definition of "victim" to include the family members of any victim of homicide even if no complaint or indictment has been issued

Background:

Currently, MGL 258B's rights apply only to victims and their family members when there has been a complaint or indictment issued. Though a clause added in 1995 does provide that prosecutors are not precluded from providing, subject to available resources, services to additional parties, this still leaves a large gap for many homicide survivors across the state. This amendment would help address the growing and vocal concern

among homicide survivors that this is a significant gap in access to services and information when the case is unsolved.

SECTION 6.

Amends the definition of “witness” to include the family member or guardian of a person who has been summoned to testify if the person is a minor, incompetent or deceased.

SECTION 7.

Clarifies that the right of victims and family members to be present at all court proceedings includes both adult and juvenile proceedings.

Background:

This language was added to reflect the specific needs of victims and witnesses in the juvenile court system, an area of practice that has evolved over time.

SECTION 8.

Clarifies that victims are entitled to receive appropriate referrals and assistance in developing safety plans.

Background:

Currently, M.G.L. Ch.258B, §3(d) grants the right to “protection assistance.” It was brought to MOVA’s attention that this was misleading and confusing. The existing language implies a systematic capability to provide actual police protection for victims and witnesses. This change reflects the system’s actual ability to address safety concerns through safety planning and relevant referrals to prevent and respond to witness intimidation or retaliation.

SECTION 9.

Amends existing language to require that all courthouses include a secure waiting area or room that is separate from the defendant, the defendant’s family, friends, attorneys, or witnesses, and separate from any district attorney’s office during court proceedings.

Background:

The current Victim Bill of Rights provides this right “subject to available resources.” MOVA is completing a compilation of statewide data regarding the status of this right and initial results indicate that very few courthouses in the state afford this right. This has been highlighted by victims and survivors across the state as an unfulfilled promise, one that is among the highest priorities for the safety of the victims and witnesses on whom the criminal justice system relies.

SECTION 10.

Changes text of M.G.L. §3(l) to reference M.G.L. Ch.268 §14B instead of M.G.L. Ch.268 §14B.

Background:

This is a technical amendment to reflect that §14B refers specifically to victims and witnesses, where as §14A refers specifically to jurors.

SECTION 11.

Requires that a victim or witness who is a child or incompetent or cognitively impaired be notified, by the prosecutor in the presence of a parent, adult family member or guardian other

than the defendant, of their existing right to submit to or decline an interview by defense counsel.

Background:

This amendment recognizes the vulnerabilities of victims and witnesses who are children, incompetent, and/or cognitively impaired and requires simply that they are notified of this right with a trusted adult present. Providing this notification will enable victims and witnesses to make an informed decision regarding whether to submit to or decline the interview.

SECTIONS 12 & 13.

Ensures that the opportunity for a victim to present a Victim Impact Statement occurs before a sentence or disposition is imposed.

Ensures that the opportunity to present a Victim Impact Statement occurs even if there is an admission to sufficient facts, the sentence is mandatory, or there is an agreed-upon plea.

Background:

The current law grants the right for victims and witnesses to be heard through oral and written impact statements at sentencing or the disposition of the case against the defendant about the effects of the crime. Victims consistently report that this opportunity is crucial to providing them with a meaningful opportunity to participate in the process and to make the impact of the crime known to the sentencing judge. We heard frequently from focus group participants that some judges hear their Victim Impact Statements only *after* the sentence has been imposed. In other instances, judges did not permit a victim to be heard if there was an agreed-upon recommendation for a plea, or if a mandatory sentence was imposed. This amendment clarifies and strengthens the original intent of this provision.

SECTION 14.

Authorizes the court to permit, upon a showing by the prosecutor that a personal appearance by the victim will cause an unreasonable hardship on the victim, a Victim Impact Statement to be offered by audio or videotape before sentence or disposition is imposed.

Background:

Other states include options in their victim rights laws that enable victims, who may be physically or emotionally unable to be present in court, to offer their Victim Impact Statements before a sentence is imposed.

SECTION 15.

Clarifies language pertaining to post-conviction notification and certification to include victims of juvenile defendants.

Background:

This language was drafted in collaboration with the Department of Youth Services.

SECTION 16, (w)

Permits a victim or witness who is a child or adult with a disability, as defined in M.G.L. Ch.265 (13)(k) to have a parent, a counselor, friend or other person having a supportive relationship with the person in the courtroom during their testimony. This right will be afforded unless, in

written findings made and entered, the court finds that the defendant's constitutional right to a fair trial would be prejudiced.

Background:

Basic accommodations are needed for children and individuals with disabilities. These accommodations will not only lessen the potential for re-victimization by the system, but will also help ensure the reliable participation of such individuals in the court process. The language was developed in consultation with the Disabled Persons Protection Commission.

SECTION 16, (x)

Requires that the prosecutor provide an orientation, as defined, to the courtroom and court procedure to any victim or witness who is a child or adult with a disability, as defined in M.G.L. Ch.265 (13)(k).

Background:

Please see explanation under section 4.

This language was developed in collaboration with the Disabled Persons Protection Commission.

SECTION 16, (y)

Requires that a summary of victim rights be conspicuously posted in all courthouses and police stations. MOVA will be responsible for creating and distributing posters, in a variety of languages as determined by the Victim & Witness Assistance Board, which will satisfy this requirement. MOVA and the Board are also required to collaborate with the Commission on the Blind to ensure that notice of victim rights is made available in Braille and languages other than English.

Background:

By posting notice of the rights in courthouses and police stations, we increase access by enabling victims and witnesses to receive early notice of their rights. This provision was developed in collaboration with the Disabled Persons Protection Commission and survivors and providers working with non-English speaking populations.

SECTION 16, (z)

Requires judges, at plea colloquy, to ensure that the victim has had input and has been informed of an admission to sufficient facts, plea, disposition, or an agreed-upon sentence recommendation by inquiring as such

SECTION 16, (aa)

Requires notice that victims have the right to present a written Victim Impact Statement to the Sex Offender Registry Board and to be informed, upon specific request, of the defendant's classification status and other authorized information.

Background:

When the original Victim Bill of Rights was enacted, the Sex Offender Registry Board (SORB) did not yet exist. This language was drafted in collaboration with the Director and legal counsel of the SORB.

SECTION 16, (bb)

Requires judges to read a brief statement at the outset of daily court proceedings indicating that victim rights are posted in the courthouse

Background:

Involving judges in the notification of victim rights would serve not only to provide timely notification to victims, but also as a means to further institutionalize victim rights in the criminal justice system. As an example, Connecticut law requires a judge to read a 30 second statement advising those in the courtroom of the specific rights of victims of crime. This legislation addresses this same goal by requiring that judges briefly reference the rights of victims and witnesses at the outset of daily proceedings and direct them to the postings within the courthouse.

SECTION 16, (cc)

Requires a responding officer who has reasonably concluded that a violent crime has been committed and that it is practicable to do so, to provide written notice of victim rights and appropriate resource referrals, said notices to be prepared by the Massachusetts Office for Victim Assistance. Written notice can be provided to other victims at the discretion of the responding officer whenever appropriate.

Background:

Many states require law enforcement first responders to notify victims of their rights. For example, CT, AZ, and MD require law enforcement to provide victims with initial written notification of their rights. This practice has proven results. Education and training were largely successful with officers trained to respond to similar needs and rights of victims of domestic violence under M.G.L. Ch.209A. MOVA would assume responsibility for production and distribution of written materials to satisfy this requirement and would also offer its services as a trainer to law enforcement agencies.

SECTION 17.

Mandates only one victim/witness fee of \$90.00 for both felonies and misdemeanors, and maintains a \$45.00 assessment for juveniles who are adjudicated to be delinquent.

Background:

The original bifurcation of assessments has proved to make little sense over time; both felonies and misdemeanors are extremely serious from a victimization standpoint and, ironically, it is often in cases of serious felonies, for which a defendant may be serving substantial prison time, that the assessment has been waived. It makes more sense to maintain a smaller assessment for juveniles.

SECTION 18.

Eliminates the possibility of judges waiving victim/witness fee assessments.

Background:

The original law allowed for the waiver of these assessments if written findings of fact were entered by the judge. This has never proved to be realistic and has resulted in a too common practice of waiving the fee. Since then, for example, the Drunk Driving Trust Fund legislation went into effect, which mandates an assessment for convicted OUI offenders with no ability for waiver. We seek to bring this statute into line.